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NO.

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ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INCORPORATED, AND PHIL CARUSO, PRESIDENT OF THE PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK,

Petitioners,

against

SAMUEL DEMILIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK

RICHARD HARTMAN
Counsel for Petitioners
252-00 Horace Harding Expressway
Little Neck, New York 11362
(212) 423-1800

Question Presented

Whether the Respondent should have access to Petitioner Corporation's membership list, purportedly pursuant to New York State statute (Not-for-Profit Corporation Law §621), where said membership list consists of name and addresses of New York City Police Officers, having legitimate rights of privacy and confidentiality as guaranteed by the United States Constitution, where Respondent has no legitimate reason for obtaining said membership list.

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NO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INCORPORATED, AND PHIL CARUSO, PRESIDENT OF THE PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK,

Petitioners,

against

SAMUEL DEMILIA,

Respondent.

PETITION FOR A *WRIT OF CERTIORARI*

Petitioners, Patrolmen's Benevolent Association of The City of New York, Incorporated and Phil Caruso, President of the Patrolmen's Benevolent Association of the City of New York pray for a *writ of certiorari* to review orders of the Court of Appeals of the State of New York, entered in these proceedings on December 20, 1983 and February 28, 1984, which denied a motion for leave to appeal to said Court of Appeals, of an Order of the Supreme Court of

the State of New York, Appellate Division, First Judicial Department entered in these proceedings November 1, 1983 and which affirmed a judgment of the Supreme Court of the State of New York, County of New York, which granted Respondents access to Petitioner Corporation's membership list of names and addresses of present and retired members.

Opinion Below

The opinion of the Supreme Court of the State of New York, County of New York, granting Respondent's application to have access to the membership list of the Petitioner Corporation the Order of the District Court, appears at page 5a to 7a of the attached appendix (1983). The opinion has not been officially reported.

Jurisdiction

The final orders of the Court of Appeals of the State of New York were entered on December 20, 1983 and February 28, 1984.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3). This Court has jurisdiction of the controversy because it involves a "... title, right, privilege or immunity ... specially set up or claimed under the Constitution, treaties, statutes of, or commission held or authority exercised under the United States." 28 U.S.C. §1257(3).

Statutory Provision Involved

Section 621(b) of the Not-for-Profit Corporation Law of the State of New York provides

"Any person who shall have been a member of record of a corporation for at least six months immediately preceding his demand, or any person holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding capital certificates, upon at least five days written demand shall have the right to examine in person or by agent or attorney, during usual business hours, its minutes of the proceedings of its members and list or record of members and to make extracts therefrom."

Statement of the Case

Petitioner Patrolmen's Benevolent Association of the City of New York, Inc. is incorporated as a private, Not-for-Profit corporation under the laws of the State of New York. Petitioner Phil Caruso is President of the Patrolmen's Benevolent Association of the City of New York. Respondent, Samuel DeMilia, is a retired member of the aforesaid Corporation.

Respondent initiated an action, through an Order to Show Cause, to compel Petitioners to provide him with access to a list of the names and addresses of the members of Petitioner Corporation. This action was based upon §621 of the Not-for-Profit Corporation Law of the Laws of New York. Respondent relied upon his status with the Petitioner Corporation, as a retired member, to justify receipt of said membership list.

In a memorandum decision dated May 27, 1983, Supreme Court of the State of New York, New York County (Hon. Alfred M. Ascione, J.) granted Respondent's motion and an Order was issued, dated July 26, 1983 (See Appendix A) compelling the Appellants to:

> "(A)llow plaintiff to make a computer disk copy of the names and addresses of all members of the Patrolmen's Benevolent Association of the City of New York at plaintiff's sole cost and expense." (See Appendix B).

Petitioners appealed the decision to the Supreme Court of the State of New York, Appellate Division, First Judicial Department. After the filing of briefs and hearing of oral argument, the Appellate Division unanimously affirmed the lower Court, without rendering an opinion. (See Appendix C).

A motion for leave to appeal to the Court of Appeals of the State of New York, was duly made by Petitioners. The Court of Appeals denied the Motion on December 20, 1983. The Order denying the Motion, and the Notice of Entry thereof were served upon Counsel for Petitioners on January 11, 1984. (See Appendix D).

Petitioners then made a motion to the Court of Appeals of the State of New York for reargument of the aforesaid denial of the motion for leave to appeal to said Court. The Court of Appeals denied the motion on February 28, 1984. (See Appendix E).

The instant petition for a writ of certiorari ensued.

REASONS FOR GRANTING THE WRIT

POINT I

Respondent should not have access to Petitioner Corporation's membership list, purportedly pursuant to New York State statute (Not-For-Profit Corporation Law §621), where said membership list consists of names and addresses of New York City Police Officers, having legitimate rights of privacy and confidentiality as guaranteed by the United States Constitution, where Respondent has no legitimate reason for obtaining said membership list.

A member's right of inspection under both common law and New York State Not-For-Profit Corporation Law §621 (b) is not absolute. A member desiring to inspect and copy a membership list from a corporation must make the application in good faith and for a proper purpose. *Matter of DePaula* v. *Memory Gardens, Inc.*, 90 AD2d 886 (3d Dept., 1982).

Once a member has established that he has such a legitimate purpose and has acted in good faith, the corporation in question must either provide the member with the list or establish that the member seeks the list in bad faith or an improper purpose. See *Crane Company* v. *Anaconda Company*, 39 NY2d 14 (1976).

It is conceded that Plaintiff-Respondent is a retired police officer and that he is a retired member of the Defendant-Appellant Corporation. However, it is submitted that the Record adduced in the proceedings below fails to establish that Plaintiff-Respondent made his application either in good faith or for a proper purpose. Therefore, without further analysis, it would appear that in order

to receive the sought after membership list, Plaintiff-Respondent must make more of a showing than he has done up to date. The fact that Plaintiff-Respondent has made no showing as to the purpose for which he wishes to employ the membership list, and indeed, he has made absolutely no good faith assertions in connection with his quest, Defendants-Appellants were justified in denying his request.

It is submitted that Petitioners herein, both corporate and the corporate president, have a duty to ensure that the membership list of their corporation does not fall into the wrong hands.

This is all the more of significance when one considers the nature of the membership of Defendant-Appellant Corporation. Indeed, the issue does not involve the membership of a milkman's association or an auto mechanic's union. It involves a benevolent association of New York City Police Officers. It is beyond dispute and states the obvious to observe that Police Officers, by the very nature of their occupation, are involved in many sensitive situations which are fraught with peril. Numerous members of the New York City Patrolmen's Benevolent Association, in the course of their duties, work in an undercover capacity, where their identities are necessarily secret. Many other police officers, in the course of carrying out of their duties, are called upon to do unpopular acts such as make arrests, traffic stops, and lawfully warn citizens to do or refrain from doing certain acts, which they would otherwise not be inclined to do. Fear of reprisals is a constant and reasonable one for police officers. Therefore, it is clear that the identities and residences of police officers must remain confidential, absent a substantial showing, not present here.

It is submitted that when the Courts of the State of New York, pursuant to the cited State statute, ordered Petitioner Corporation to turn over to Respondent, their membership list, certain rights of the membership of the Corporation, guaranteed by the United States Constitution were affected. These rights involve legitimate concerns of privacy, confidentiality and freedom from hostile action by criminal elements of society, who would seek reprisals against the membership of the Petitioner Corporation, who are or were actively involved in law enforcement activities. Surely, Amendments 1, 4 and 9 to the United States Constitution protect the Petitioner Corporation and its membership from improper intrusion, such as that, which in effect, was ordered, albeit unwittingly, by the orders of the Courts of the State of New York.

It is requested that this Court intervene and act to shield Petitioner Corporation and its membership from this serious threat to Constitution rights.

In passing, the Court should be made aware that both Houses of the Legislature of the State of New York have passed a bill to amend the said section §621(b) of the State Not-for-Profit Corporation Law. The intent of the Legislature, in so amending the statute, reflects a concern of said body, lest the improvident judicial construction of the statute by the New York Courts, in allowing the potentially unchecked distribution of the names and addresses of New York City Police Officers, result in tragedy. The bill is presently awaiting the signature of the Governor of the State of New York.

CONCLUSION

For the reasons stated above, it is respectfully requested that the petition for a writ of certiorari be granted.

Respectfully submitted,

RICHARD HARTMAN
Counsel for Petitioners
252-00 Horace Harding Expressway
Little Neck, New York 11362
(212) 423-1800

Dated: March 2, 1984

Certificate

Richard Hartman hereby certifies that he is a member of the bar of the Supreme Court of the United States and states that three copies of the Petition for a Writ of Certiorari to the Court of Appeals of the State of New York were mailed by postpaid First Class Mail to the following:

Peter J. Maloney
Counsel for Respondent
2248 Broadway
New York, New York 10024

by depositing same in a United States Post Office at 90 Church Street, New York 10007

with first class postage prepaid and that forty copies were deposited in a United States Post Office at 90 Church Street, New York, New York 10007 with first class postage prepaid and properly addressed to The Clerk of the Supreme Court of the United States, Supreme Court Building, One First Street, N.E. Washington, D.C. 20543,

RICHARD HARTMAN

Sworn to before me
this 5th day of
March, 1984

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4502705
Qualified in Deleware County
Commission Expires March 30, 1985

APPENDIX A

Order of the Supreme Court of the State of New York, County of New York

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 60 Centre Street, New York, New York on the 20 day of July, 1983

Present:

Hon. Alfred M. Ascione
Justice

SAMUEL DEMILIA,

Plaintiff,

—against—

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INCORPORATED, and PHIL CARUSO, as President of the Patrolmen's Benevolent Association of the City of New York,

Defendant.

Index No. 24852/82

Appendix A

Upon reading and filing the order to show cause signed by the Honorable Thomas J. Hughes, Supreme Court of the State of New York, on the 3rd day of May, 1983, the affidavit of Samuel DeMilia, sworn to on the 3rd day of May, 1983, and the exhibits annexed thereto, the affidavit of Phil Carusa, sworn to on the 12th day of May, 1983, and the exhibits annexed thereto, the affidavit of Samuel DeMilia, sworn to on the 17th day of May, 1983, and the exhibits annexed thereto, and the decision of the Honorable Alfred M. Ascione dated the 27th day of May, 1983, it is hereby

ORDERED, that defendant, Patrolmen's Benevolent Association of the City of New York, Inc. allow plaintiff to make a computer disk copy of the names and addresses of all members of the Patrolmen's Benevolent Association of the City of New York at plaintiffs sole cost and expense.

ENTER:

A.M.A

(Filed: July 26, 1983, County Clerk's Office New York)

APPENDIX B

Memorandum Decision (Ascione, J.) of the Supreme Court of the State of New York, County of New York

SUPREME COURT OF THE STATE OF NEW YORK

Special Term Part I, New York County

at the Courthouse thereof, 60 Centre Street, New York, New York, 10007.

Present:

Hon. Alfred M. Ascione
Justice

SAMUEL DeMILIA,

Plaintiff,

—against—

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INCORPORATED, and PHIL CARUSO, as President of the Patrolmen's Benevolent Association of the City of New York,

Defendant.

The following papers numbered 1 to 6 read on this motion submitted.

No. 146 on Calendar of May 18, 1983.

Appendix B

	Papers Numbered
Plaintiffs' Order to Show Cause and Affidavits Annexed	1 & 2
Defendant's Answering Affidavit in Opposition	4
Plaintiffs' Reply Affidavit in Support	5 & 6
Affidavit of Service	3

Upon the foregoing this motion is decided in accordance with accompanying memorandum decision.

A.M.A
J.S.C.

Dated May 27, 1983

Briefs: Plaintiff's X, Defendant's X.

County Clerk's No. 24852 1982

Spec I D62, 9 1983

Appendix B

SUPREME COURT : NEW YORK COUNTY

Special Term, Part I

SAMUEL DEMILIA,

Plaintiff,

—against—

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INCORPORATED, and PHIL CARUSO, as President of the Patrolmen's Benevolent Association of the City of New York,

Defendant.

MEMO

Index No. 24852/82

146 of 5/18/83

ALFRED M. ASCIONE, J.:

Motion for an order permitting plaintiff to inspect the membership list of the defendant corporation is granted.

Section 621 (b) of the Not-for-Profit Corporation Law provides in pertinent part:

Appendix B

> Any person who shall have been a member of record of a corporation for at least six months immediately preceding his demand . . . upon at least five days written demand shall have the right to examine . . . [the] record of members and to make extracts therefrom.

It is undisputed that plaintiff is a lifetime member of the corporation; that he held such membership for the six months immediately preceding his demand to inspect the membership list; and that his request has been refused by defendants. Defendants justify their refusal on the grounds that plaintiff is not a qualified candidate for elective office and cannot have a legitimate need for the list; that as a retired member of the PBA he has only a minimal interest in the corporation; and that there is a strong public policy against publication of the names and addresses of police officers. None of these grounds provides a reasonable basis for defendants' refusal, however.

Article 3, Section 5 of the Constitution and By-laws of the Patrolmen's Benevolent Association provides that members such as plaintiff are entitlled to all the rights and benefits of active members. Thus, plaintiff is entitled to make an application under section 621 of the NPCL.

Moreover, the status of plaintiff's candidacy is irrelevant to the present application. As a member of the association, subject to its policies and decisions regarding benefits, representation, and other emoluments of membership, plaintiff has the right to express his opinions and communicate his views concerning the administration of the organization to other members. This right is not necessarily contingent on his actively seeking elective office in the association. In this regard, the court also notes paren-

thetically that plaintiff has challenged defendants' refusal to recognize his candidacy and that he commenced the instant action, *inter alia* in an effort to annul that decision.

Nor, as conceded by plaintiffs, does the public policy of this state require that plaintiff be denied access to the membership list so long as he has standing to apply under the statute and has a legitimate reason for release of the information.

Settle order.

Dated: May 27, 1983

A.M.A
J.S.C.

APPENDIX C

Order of the Supreme Court of the State of New York Appellate Division—First Department

(Filed—November 1, 1983)

ORDER OF AFFIRMANCE BY THE APPELLATE DIVISION FIRST DEPARTMENT held in and for the First Judicial Department in the County of New York, on November 1, 1983.

Hon. Leonard H. Sandler, Justice Presiding
Joseph P. Sullivan
David Ross
Sidney H. Asch
Fritz W. Alexander, II, Justices.

17819

SAMUEL DeMILIA,

Plaintiff-Respondent,

—against—

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INCORPORATED, and PHIL CARUSO, as President of the Patrolmen's Benevolent Association of the City of New York,

Defendants-Appellants.

Appendix C

An appeal having been taken to this Court by the defendants-appellants from an order of the Supreme Court, New York County (Alfred Ascione, J.), entered on July 26, 1983, which granted plaintiff's motion to permit plaintiff to inspect and make a computer disc copy of names and addresses of the membership list of the defendant Policemen's Benevolent Association,

And said appeal having been argued by John Maguire of counsel for appellants, and by Peter J. Maloney of counsel for respondent; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same is hereby affirmed, without costs and without disbursements.

ENTER:

FRANCIS X. GALDI
Deputy Clerk.

APPENDIX D

Order of the Court of Appeals of the State of New York Denying Motion for Leave to Appeal to the Court of Appeals

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twentieth day of December A. D. 1983

Present,

Hon. Lawrence H. Cooke,
Chief Judge, presiding.

#1 Mo. No. 1201

In the Matter of the Application

of

SAMUEL DeMILIA,

Respondent,

vs.

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INCORPORATED, ET AL.,

Appellants.

Appendix D

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellants herein and papers having been submitted thereon and due deliberation thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with twenty dollars costs and necessary reproduction disbursements.

DONALD M. SHERAW
Clerk of the Court

APPENDIX E

Decision of the Court of Appeals of the State of New York Denying Motion for Reargument of the Motion for Leave to Appeal to the Court of Appeals

#1 Mo. No. 1201

IN THE MATTER OF THE APPLICATION

of

SAMUEL DEMILIA,

Respondent,

VS.

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INCORPORATED, ET AL.,

Appellants.

Motion for reargument of motion for leave to appeal denied with twenty dollars costs and necessary reproduction disbursements.

Decision Court of Appeals February 28, 1984.

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